



C.R.P. No.1503 of 2020 & C.M.P. No.8863 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP No.1503 of 2020

&

C.M.P. No.8863 of 2020

1. Elumalai
2. Mahaveerchand Jain
3. Jayagopal
4. Rajasekaran
5. Parasmull Jain
6. Kanyalal Jain
Uttam Chand Jain (died)
Kuberan Chettiar (died)
Shanthilal Jain (died)
7. Sivakumar
8. The Chairman
Tirukoilur Sri Vidyamandir Educational Trust
Represented by its Chairman
Office at No.12 B(1), Hospital Road,
Tirukoilur Town

... Petitioners

Vs.

1. Gyanchand Bohra
2. Thiagarajan
3. Pandurangan
Ramanujam (died)
4. Vijayanthi Ammal



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5. Kanagaran
6. Sathiyamoorthy
7. Shanmugam
8. Manikavasakam
9. Mahendar
10. Chandramouli
11. Prithiviraj
12. Jawaharlal Jain
13. Thiruvikaraman
14. Gopalakrishnan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 20.01.2020 passed in I.A. No. 101/2005 in O.S. No.1/2005 on the file of the Principal District Court, Villupuram.

For Petitioners : Mr.N. Suresh

For R1 to R4 & R6 & R9 : Mr. K. Doraisami, Senior Counsel

Assisted by Mr.S.Muthumani Doraisami

ORDER

This Civil Revision Petition is filed against the fair and decreetal orders dated 20.01.2020 passed in I.A. No. 101/2005 in O.S.No.1/2005 on the file of the Principal District Court, Villupuram.



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2. The revision petitioners are the defendants in O.S.No.1/2005 on the file of the Principal District Court, Villupuram. The respondents/plaintiffs filed the suit for the following reliefs:

- i. To remove defendants 1 to 24 from office of trusteeship of Tirukoilur Sri Vidhyamandir Educational Trust and membership of the said trust.
- ii. To frame a scheme providing for proper management of the Tirukoilur Sri Vidhyamandir Educational Trust, its affairs, membership, disqualification, election of Board/Executive Committee, its chairman, Secretary, Treasurers etc., duration of office etc., and all incidental matters or connected therein for effective and better management of the trust, the schools established and run by the trust after calling for a draft scheme from all persons who are interested in the Trust, and the schools,etc.
- iii. To appoint an Administrator for the said Tirukoilur Sri Vidhyamandir Educational trust, to take charge and administer the trust properties, the affairs of the trust and schools established by the



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trust pending framing of scheme as an interim measure for smooth functioning and election of new set of Board of Trustees as per the proposed scheme and to restrain defendants from interfering with such management of the administrator.

- iv. To appoint an auditor to go into the accounts of the Tirukoilur Sri Vidhyamandir Educational trust, submit a report and take appropriate action against respondents for restitution of trust, its assets, funds and order recovery in case this court finds misappropriation and fraudulent misapplication of funds.
- v. To direct defendants 1 to 24 to file statement of affairs relating to the said Tirukoilur Sri Vidhyamandir Educational trust during the period for which they functioned as trustees in management and administration of the schools and direct them to render true and correct account.
- vi. To issue suitable directions with respect to a sum of Rs.2,77,060/- which the plaintiffs have deposited with Karur Vysya Bank, /villupuram in F.D's and deposited with Indian Bank, Tirukoilur in



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current account numbers 395 and 396 besides the cash balance of Rs.529/-.

- vii.To direct defendants 26 to 28 not to allow defendants 1 to 24 to withdraw any of the investments of the said Tirukoilur Sri Vidhyamandir Educational Trust fund and to render assistance to Administrator and newly elected Board with respect to trust its assets, funds and schools.
- viii.To direct defendants No.2, 7 and 8 to pay Rs.19,095/-, Rs.37,265/- and Rs.37,035/- respectively to the Tirukoilur Sri Vidhyamandir Educational trust and the schools established by it.
- ix. To restrain defendants 1 to 24 by an order of injunction from in any manner interfere with management, day to day affairs, assets, school administration of the Tirukoilur Sri Vidhyamandir Educational Trust.
- x. To restrain defendants No.1 form operating S.B.A/c. No.003997, SBI Tirukoilur, where Rs.3,00,000/- of the Trust funds has been invested in the joint name of first defendant and Mr.R.Arul, Principal and direct them to bring the entire amount in deposit to the credit of



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this suit and direct them to make good the loss caused to the trust.

- xi. To pass such further or other consequential and incidental reliefs for the better administration of the trust, its affairs and schools established by the trust inclusive of the relief of nullification of irregular appointments made after 21.05.2003, as this Hon'ble court deems fit including payment of costs by defendants 1 to 24.

3. The suit was filed in representative capacity under Section 92 r/w Order VII Rule 1 CPC. Along with the plaint, the plaintiffs filed I.A.No.5/2005 praying to grant leave to file the suit under Section 92 CPC and the said application was allowed by the learned Principal District Judge, Villupuram. Thereafter the revision petitioners/defendants 1 to 9 filed an application in I.A. No.101/2005 under Sections 92(1) and 151 CPC to revoke the permission granted to the plaintiffs to file the suit under Section 92 CPC and also to dismiss the suit. The said application was dismissed by the learned Principal District Judge, Villupuram. In the said I.A. the revision petitioners wanted to let in oral evidence, but the



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same was declined by the learned Principal District Judge, Vilupuram. Therefore, the revision petitioners filed a revision challenging the same in C.R.P.(PD) No.1972 of 2011, before this Court. and it was allowed by this Court on 23.11.2011 with the following directions.

“6. Considering the above facts and circumstances, I am of the considered view that the order under revision does not require any interference by this Court. However, if the petitioners have filed any document, the same has to be considered by the learned trial Judge and is directed to entertain the same, if there is no objection for marking the document by the other side. Even if objection is raised, the same has to be considered by the learned Trial Judge as to whether the document is admissible or not. The learned Trial Judge is directed to dispose of the application at the earliest, in any event, within one month from the date of receipt of a copy of this order or production of the same, whichever is earlier”.



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Thereafter, the revision petitioners filed as many as 12 documents before the trial court and the trial court vide his orders dated 05.03.2012 declined to mark the said documents. Aggrieved over which, the defendants filed C.R.P.(PD) No.1731/2012 before this Court. A learned Single Judge of this Court vide his orders dated 28.02.2013 set aside the orders passed by the Principal District Judge, Villupuram, in I.A. No.101/2005 and observed as follows:

"In view of the above, this petition is allowed. The order of the lower court is set aside and the matter is again remitted back to the lower court with a direction to the lower court to mark all the twelve documents as exhibits on the side of the petitioners herein, however, subject to their admissibility.

Therefore, the matter was once again taken up by the Principal District Judge, Villupuram and on 20.01.2020 the learned Principal District Judge, Villupuram, dismissed the petition filed by the defendants 1 to 9 by holding that the permission already granted under Section 92(1) CPC



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cannot be revoked. Aggrieved over the same, the present Civil Revision Petition is filed.

4. The learned counsel for the revision petitioners would contend that though this Court directed the learned Principal District Judge to mark all the documents as exhibits and to consider the same, the trial court had not even looked into these documents and has passed a cryptic order. He also drew the attention of this court to the orders passed by the trial court wherein the documents were not even appended. He therefore, prayed for remitting the matter back to the trial court for considering the documents adduced by the defendants before passing an order as per the direction of this Court in CRP No.1731/2012.

5. Per contra, Mr. K. Doraisami, learned Senior Counsel assisted by Mr.S.Muthumani Doraisami, learned counsel for the respondents contended that as per Section 92 CPC, the grant of leave does



not essentially involve an adjudicatory process. The Court should look into the averments and allegations in the plaint to arrive at a *prima facie* satisfaction that the suit would fall within the ambit of Section 92 CPC. He would further contend that the Court has necessarily a duty to protect the interest of the public Trust and that while dealing with application under Section 92 CPC, the Court should not adopt a hyper technical approach. He relied on the following decisions in support of his contentions.

- i. B.D.V. Rangarathinam and others vs. Sri Bakthositha Perumal Temple, Sholinghur and others reported in 2004 (4) CTC 641.
- ii. Vidyodaya Trust vs. Mohan Prasad R and others reported in (2008) 4 SCC 115
- iii. Nadigar Sangham Charitable Trust, repp. by its Managting Trustee vs. S. Murutan @ Poochi Murugan reported in 2012 (6) CTC 721
- iv. G.V. Selvam vs. G.V. Sampath & others reported in (2015) 6 CTC 515.
- v. Ch. Mahesh Kumar Reddy & others vs. Sathyanarayana Charitable Trust Rep by its Managing Trustee and others reported in (2018) 2



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CTC 762.

vi. Thatha Sampath Kumar and another vs. Sri Vupputur Alwar Chetty's Charities Rep. by its Hereditary Trustee reported in (2019) 5 CTC 212.

However, in all his fairness, he would concede that the trial court has not followed the directions passed by this Court in C.R.P No.1731/12. He would further contend that the trial court may be directed to hear the matter in I.A. No.101/05 afresh after considering all the documents and pass appropriate orders. He would further requested this Court to direct the trial court to dispose of the application and the suit within the time frame fixed by this Court.

6. It is pertinent to point out that though this Court, vide its orders dated 28.02.2013 in C.R.P.(PD) No.1731/2012 directed the Principal District Judge, Villupuram, to mark all the documents submitted by the revision petitioners as exhibits and to consider the same, the trial



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court judge dismissed the application in I.A. No.101/2005 without even referring any of the documents filed by the revision petitioners in his orders. She did not also state that all the documents adduced on the side of the revision petitioners are not admissible in evidence. In the circumstances, the order of the trial court in I.A. 101/05 in O.S. No.1/05 dated 20.01.2020 is liable to be set aside and the matter is remitted back to the trial court for fresh consideration.

7. In the result,

- i. the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the fair and decreetal orders dated 20.01.2020 passed in I.A. No. 101/2005 in O.S. No.1/2005 on the file of the Principal District Court, Villupuram, is set aside.



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iii. The matter is remitted back to the Principal District Court, Villupuram. Since the suit is of the year 2005, the learned Principal District Judge, Villupuram, is directed to dispose of I.A.No.101/2005 in O.S. No.1/2005 within a period of one month after affording sufficient opportunity to both sides and thereafter dispose of the suit in accordance with law as expeditiously as possible.

16.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/non speaking
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R.HEMALATHA, J.,

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To,

The Principal District Judge, Villupuram.

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